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United States District Court
Western District of Wisconsin
Theresa M. Owens

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

LORENZO JOHNSON,

OPINION AND ORDER

Petitioner,

07-C-390-C

v.

RICK RAEMISCH,
DANE WESTFIELD[1] and
MIKE THURMER,

Respondents.

- -

This is a proposed civil action for monetary, declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983. Petitioner contends that respondents Dane Westfield, Mike Thurmer and Rick Raemisch denied his subscription to "Prisoner Action Coalition," in violation of his First Amendment right to free speech. Petitioner has made his initial partial payment in accordance with 28 U.S.C. § 1915.

Because petitioner is a prisoner, I am required under the 1996 Prison Litigation

[1] In the body of his complaint, petitioner refers to this defendant as both "Don Westfield" and "Dan Westfield." I have used the spelling that petitioner uses in the caption of his complaint, "Dane."

Reform Act to screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. I conclude that petitioner has stated a claim upon which relief may be granted that respondents violated his right to free speech by denying his subscription and I will allow him to proceed on this claim.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Lorenzo Johnson is a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin. In 2007, petitioner subscribed to a publication called "Prisoner Action Coalition." However, when the publication arrived at the prison on March 29, 2007, it was not delivered to him. Instead, he received a "notice of non-delivery" from the mail room, informing him that respondent Dane Westfield (the security chief for the Department of Corrections) had concluded that the publication "contains materials, which, if completed, would violate the Laws of the United States or the Administrative Code rules."

Petitioner filed a grievance in which he complained about the censorship of the publication. Respondents Mike Thurmer (the warden) and Rick Raemisch (the deputy secretary of the Department of Corrections) denied the grievance.

DISCUSSION

I understand petitioner to contend that respondents Westfield, Thurmer and Raemisch violated his right to free speech when they denied his subscription to "Prisoner Action Coalition." Petitioner's claim in governed by the standard set forth in Turner v. Safley, 487 U.S. 82 (1987), which is whether the restriction on the publication is reasonably related to a legitimate penological interest. In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; whether alternatives for exercising the right remain to the prisoner; what impact accommodation of the right will have on prison administration; and whether there are other ways that prison officials can achieve the same goals without encroaching on the right. Id. at 89.

I will allow petitioner to proceed on this claim. Any censorship of a prisoner's written materials may violate the First Amendment unless there is adequate justification for it. King v. Federal Bureau of Prisons, 415 F.3d 634, 638 (7th Cir. 2005) (reversing dismissal of prisoner's claim that defendants refused to allow plaintiff to purchase book on computer programming because defendants had not shown justification for decision). Although petitioner says respondents denied the publication because they believed it violated the law, petitioner does not say why they believed this. In any event, the Court of Appeals for the Seventh Circuit has suggested that district courts should wait until summary judgment to determine whether there is a reasonable relationship between a restriction and a legitimate penological interest. E.g., Lindell v. Frank, 377 F.3d 655, 658 (7th Cir. 2004) (holding that it was error for district court to conclude at screening stage that policy was reasonably related to legitimate interest).

I give petitioner a few words of caution. First, petitioner should be aware that prison officials are afforded substantial deference in any determination regarding security. E.g., Thornburgh v. Abbott, 490 U.S. 401 (1989) (upholding regulation that prohibited prisoners from receiving publications "detrimental to the security, good order, or discipline of the institution"); Koutnik v. Brown, 456 F.3d 777, 785 (7th Cir. 2006) (deferring to prison staff's assessment regarding gang symbols). Thus, if respondents' reasons for denying the publication were related to security, petitioner may be required to come forward with evidence showing that it would be unreasonable to believe that the publication poses a security threat. Beard v. Banks, 126 S.Ct. 2572, 2582 (2006) (concluding that prisoner failed to meet burden on summary judgment, because he failed to "offer any fact-based or expert-based refutation" of defendants' opinion).

On the other hand, respondents should be aware that deference does not imply abdication. Miller El v. Cockrell, 537 U.S. 322, 340 (2003). Even under the deferential Turner standard, courts have a duty to insure that a restriction on the constitutional rights of prisoners is not an exaggerated response to legitimate concerns. As the Supreme Court held recently in Beard, 126 S.Ct. at 2582," Turner requires prison authorities to show more than a formalistic logical connection between a regulation and a penological objective."

ORDER

IT IS ORDERED that

1. Petitioner Lorenzo Johnson is GRANTED leave to proceed on his claim that respondents Rick Raemisch, Dane Westfield and Mike Thurmer denied petitioner a subscription to "Prisoner Action Coalition," in violation of petitioner's First Amendment right to free speech.

2. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint and this order are being sent today to the Attorney General for service on the state respondents.

3. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on

the court's copy that he has sent a copy to respondents or to respondents' attorney.

4. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. The unpaid balance of petitioner's filing fee is $348.54; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

Entered this 21st day of August, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge